

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2180.05
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	September 30, 2004
DATE OF REPORT:	October 28, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	November 30, 2004

COMPLAINT ISSUE:

Whether Indianapolis Public Schools violated:

511 IAC 7-30-3(x) by failing to implement the independent hearing officer's written decision within thirty calendars from the date the School received the decision.

FINDINGS OF FACT:

1. The Student has been identified as having a moderate mental disability and a communication disorder and has been determined eligible for special education and related services.
2. On August 11, 2004, the independent hearing officer (IHO) issued the Due Process Hearing Decision in Article 7 Hearing # 1428.04. The Decision included fifteen Orders. Due to clerical errors, there are two Orders numbered 4 and two Orders numbered 5. In this Complaint Investigation Report, an asterisk is used to distinguish the second Order 4* from the first Order 4. Similarly, an asterisk is used to distinguish the second Order 5* from the first Order 5. Due to clerical errors, Order 1 and Order 6 refer to the 2003-2004 school year. In this Complaint Investigation Report, Order 1 and Order 6 are treated as if they stated "2004-2005," rather than "2003-2004." The text of the Orders is appended to this Complaint Investigation Report.
3. On August 13, 2004, the School and the Complainant each received the Decision. The Student's Parent acknowledges receipt of the Decision on the same date.
4. Order 13 stated, "These Orders are to be implemented as stated unless this decision is appealed to the Indiana Department of Education." The Decision concluded with a Notice of the Right of Appeal to the Indiana Board of Special Education Appeals. The time for filing an appeal expired September 13, 2004. Neither of the parties appealed.
5. Order 1 and Order 3, taken together, established that the individualized education program (IEP) proposed by the School on May 21, 2004, was to serve as the interim IEP for the Student's 7th grade year. Other Orders required certain actions to be taken within ten calendar days after receipt of the Decision. The tenth calendar day was August 23, 2004. Order 5, Order 4*, and Order 8 required the School to conduct certain assessments of the Student by August 23, 2004. Order 5*, Order 6, and Order 7 required the School to make arrangements by August 23, 2004, for certain assessments to be conducted by independent professionals (i.e., persons not employed by the School). Order 4 required the School to convene a meeting of the Student's case conference committee (CCC) by August 23, 2004, to revise the IEP based upon the assessments that had been conducted, to address certain additional components of

the IEP and details of the Student's educational program, and to report to the Parents on the School's progress toward obtaining the services of independent professionals to conduct required assessments.

6. On August 16, 2004, the local director of special education (Local Director) contacted the Parent by telephone regarding the assessments required by Order 5, Order 4*, Order 6, Order 8, and related topics including the time of the CCC meeting required by Order 4. The Local Director proposed an independent speech-language pathologist (SLP) to conduct the speech-language and assistive technology assessments required by Order 6. The Parent acknowledges that the telephone conversation was an attempt by the School to implement the Orders.
7. On August 17, 2004, a special education supervisor (Supervisor) personally delivered to the Parents a letter from the Local Director. The letter summarized the telephone conversation of the previous day and notified the Parents that the assessment required by Order 5 would be conducted on August 18, 2004. The enclosures with the letter included a Notice of Case Conference scheduled for August 23, 2004, the Notice of Parent Rights, and a consent for evaluation form covering all assessments required by the Orders. The Parent acknowledges receipt of the letter and enclosures.
8. On August 17, 2004, after reading the School's letter, the Parent telephoned the Supervisor to notify the School that the Student would not be enrolled in the School as of the beginning of the 2004-2005 school year, as the Parents intended to pursue other alternatives for the Student's education. On August 24, 2004, in compliance with the notification requirement of the Compulsory School Attendance Law, IC 20-8.1-3, the Parents completed the formal procedure to register their home school as a nonpublic school. The Parent asserts that the decision to home-school had been made as of August 17, 2004, and that the Parent attempted to utilize the Indiana Department of Education's on-line registration procedure prior to August 24, 2004. The School does not dispute these assertions.
9. On August 18, 2004, the School made arrangements for the Student's bus transportation for the 2004-2005 school year.
10. The Parents did not provide consent for evaluation(s) and did not make the Student available to the School on August 18, 2004, for the assessment required by Order 5.
11. The School was prepared to hold a CCC meeting on August 23, 2004, but did not do so because the Parents did not appear.
12. On August 24, 2004, the Complainant notified the School that the Parents had decided to accept some of the services ordered by the IHO and to reject other services ordered by the IHO. The Parents accepted Order 1, Order 2, subparts d and h of Order 4, Order 6, and Order 13 without qualifications. The Parents accepted Orders 9, 10, 11, and 12 only with respect to the speech-language and assistive technology assessment(s) required by Order 6. The acceptance of Order 6 specified that CCC meetings would be conducted by educational sources other than the School, although the School was expected to pay for the services of the independent SLP required by Order 6. The acceptance of Order 10 included the Parents' acceptance of the independent SLP proposed by the School on August 16, 2004. All other Orders were declined, although the rejection of Order 4 was qualified by the statement that the Parents would cooperate with the CCC process if a CCC meeting was necessary to implement the services that were accepted. On September 29, 2004, the Parent confirmed that the only services accepted were the speech-language and assistive technology evaluations and services to be provided by an independent SLP. The Parent characterized these services as "compensatory services."
13. Order 10 required the revised IEP to be developed and approved within 30 calendar days from receipt of the Decision. The 30th day was Sunday, September 12, 2004. Revisions to the interim IEP were to be

based upon information obtained from the assessments required by the Orders. As of September 12, 2004, the Parents had not made the Student available for any assessments required by the Orders. As of September 12, 2004, the CCC had not convened.

14. On September 16, 2004, the School wrote to the Parents, stating that the School continues to be prepared to implement the Orders, beginning with the assessments required by Order 5 and Order 4*, and followed by a CCC meeting to review and revise the interim IEP. The School's letter also stated: "Since you have chosen to home school [the Student], the case conference committee will also discuss an appropriate service delivery plan at that time." A "services plan" is the term used in federal special education regulations [32 CFR §§ 300.454 – 300.456] to distinguish a private school student's individualized plan of services from a public school student's IEP. On September 24, 2004, the Parents received the School's letter.
15. Order 10 required the Parents to make the Student available to the School for the evaluations required by the Orders, unless illness or other significant events temporarily prevent the Student's attendance. Order 9 required all evaluations to be completed within forty-five calendar days from the date the Decision was received. The 45th day was September 27, 2004. However, Order 10 also provided that, for each day the Student was not available due to illness or other significant events, the School is to have an additional day to complete the assessments. The Parents' provision of home-schooling is a significant event that caused the Student to be absent from the School on all days since August 19, 2004, the first instructional day of the School's 2004-2005 calendar.
16. On September 29, 2004, the Parent learned that the mutually agreed-upon independent SLP was not available to conduct the assessment(s) of the Student. The School learned this information on October 8, 2004.
17. The Parent looked into other possible SLPs and on October 11, 2004, provided to the School a list of 8 possibilities including one private agency identified as the Parent's preference of choice. The Parent expressly refused to allow the School to contact any of the 8 independent SLPs under consideration by the Parent or the 2 additional independent SLPs suggested by the School, without the Parent's participation in the conversation(s). On October 13, 2004, the School arranged for the Local Director and the Parent to meet with an SLP employed by the private agency that is the Parent's preference of choice. The meeting is scheduled for October 28, 2004. The next available date for an assessment is November 3, 2004. Although the School did not schedule the assessment because the Parent has not provided written consent allowing the independent SLP to share information with the School, the School authorized the Parent to ask the independent SLP to hold the date of November 3, 2004.
18. Order 2 awarded "one year of compensatory education beyond that specified in Article 7." The Student was thirteen years old when the Decision was rendered. All other Orders related to the 2004-2005 school year. The word "compensatory" is not used in the Findings of Fact, the Conclusions of Law, or the Orders, except in Order 2. Specifically, Order 6 is not an order for compensatory services.
19. The IHO's Decision assumed that the Student would be enrolled in the School for the 2004-2005 school year. By way of illustration and not limitation, Order 1 establishing grade level, Order 3 establishing an interim IEP, Order 4a requiring the School to provide transportation, and Order 11 directing the Parent to request mediation or a due process hearing if proposed revisions of the Student's IEP are unacceptable, are applicable only to a public school student.
20. It is undisputed that the Student is not enrolled in the School and has not attended a school under the School's authority at any time during the 2004-2005 school year.

CONCLUSIONS:

It is specified in 511 IAC 7-18-1 and 511 IAC 7-18-2 that Article 7 applies to students who are at least three years of age, but less than twenty-two years of age. As Findings of Fact #1 and #4 indicate that the Student is currently eligible for special education and related services and is less than twenty-two years of age, Order 2 is not to be implemented at this time. Although the terms "compensatory education" and "compensatory services" are sometimes used interchangeably, Order 2 refers to compensatory education after the age of entitlement, as indicated by the IHO's use of the phrase "beyond that specified in Article 7." Therefore, a violation of 511 IAC 7-30-3(x) is not found with respect to Order 2.

Findings of Fact #6, #7, #9, #11, and #14 indicate that the School has implemented the Orders, to the extent possible, given the circumstances indicated by Findings of Fact #8, #10, #12, #13, #15, #16, #17, and #20. Due to the circumstances indicated by Findings of Fact #8, #15, and #20, the timelines established by the IHO were automatically extended, notwithstanding the timelines that otherwise would have applied by virtue of the circumstances indicated by Finding of Fact #3 and #5. As of the date the Complaint was filed, the extended timeline for implementation of the Orders had not expired. Finally, given Findings of Fact #8, #19, and #20, Orders (other than Order 2) are not binding upon the School. However, the School has on-going responsibilities under 511 IAC 7-19-1, and Finding of Fact #14 and #17 indicate that the School has taken steps to fulfill those responsibilities. Therefore, a violation of 511 IAC 7-30-3(x) is not found.

The Department of Education, Division of Exceptional Learners requires no corrective action based on the Findings of Fact and Conclusions listed above. However, as Order 12 requires the Division to monitor the implementation of the Order(s), the Division will maintain oversight of the implementation of Order 2 in the future and, in the event the Student is re-enrolled in a public school during the 2004-2005 school year, the Division will initiate oversight at the time of re-enrollment. The Associate Superintendent of the Indiana Department of Education has appointed the complaint investigator to serve as the monitor, but reserves the right at any time to change the appointment of the person to monitor the implementation of the Order(s).

Orders

1. The Student is to be assigned to the seventh grade for the school-year 2003-2004.
2. The Student is to be awarded one year of compensatory education beyond that specified in Article 7.
3. The IEP proposed by the School and dated May 21, 2004, shall serve as the interim IEP and shall be amended as data are available to do as prescribed below.
4. Within ten (10) calendar days after the receipt of this decision, the School is to convene a meeting of the CCC. At this meeting the CCC, with parental participation, shall review each of the services to be provided in order to establish an initial educational program for the Student for the beginning of the new school year. The following immediate affirmations, additions and modifications to the interim IEP shall be made.
 - a. The school shall provide transportation for the Student as stated.
 - b. A daily schedule for the student shall be established. The School shall have the final authority in establishing this schedule. However, input from the Parents is anticipated.
 - c. Opportunities for providing the Student increased opportunities to meaningfully interact with his nondisabled peers shall be selected and incorporated into the interim IEP.
 - d. The School's progress toward obtaining the services of other professionals as required below will be provided to the Parents.
 - e. The schedule by which the Parents will be informed of the Student's progress toward the goals and objectives/benchmarks contained in the IEP shall be established and incorporated into the

IEP. Accordingly, the Parents shall be provided a written summary report of the Student's progress on the goals and objectives/benchmarks contained in the Student's IEP every two weeks throughout the school year.

- f. The method by which such progress will be communicated to Parents shall be established and incorporated into the IEP. The method by which such information is to be communicated shall meet the requirements of Article 7. At least monthly, this report shall include objective assessment of each of the goals and objectives/benchmarks contained within the IEP. This same format shall be used for the annual review of the Student's IEP.
- g. The Student shall be assigned an IA for those time periods wherein the Student will be participating with nondisabled peers. A full-time one-on-one IA is not required during time periods when the Student is receiving instruction in a special education setting.
- h. Other items may be included in this CCC meeting at the agreement of the parties. Additional meetings of the CCC shall be scheduled monthly for the remainder of the 2004-2005 school year for the purposes of 1) responding to data received from the following assessments, and 2) on the basis of these data, continue to modify the interim IEP in order to develop a final and appropriate document for the Student including a positive behavior intervention. Each goal and objective/benchmark modified or added to the interim IEP is to be stated in such a manner as to be 1) observable, and 2) measurable using objective measures.

- 4. Within ten (10) calendar days after receipt of this decision, the School is to conduct a thorough educational assessment of the Student using instruments validated for such. The assessment is to include, as a minimum, the areas of reading, mathematics, and language arts. Other areas of assessment shall be included as determined by the CCC.
- 4.* Within ten (10) calendar days after the receipt of this decision, the School is to conduct a social skills needs assessment using instruments validated to provide such data.
- 5.* Within ten (10) calendar days after the receipt of this decision, the School is to obtain and arrange for payment of the consultative services of one whose expertise is in the area of conducting functional behavioral assessments, and cause such an assessment to occur as soon as the consultant's schedule will allow.
- 6. Within ten (10) calendar days after the receipt of this decision, the School is to obtain and arrange for payment of the services of one who is appropriately licensed in the area of Speech-Language Pathology and arrange for an assessment of the Student's skills and deficits in this area as soon as the consultant's schedule will allow. The student shall receive privately provided speech-language services for the 2003-2004 school year according to the schedule recommended by this practitioner. The School shall be responsible for the costs involved for such services, including but not limited to either providing transportation to and from such services, or providing reimbursement to the Parents at the rate local education association's (LEA's) employees are reimbursed for travel expenses. The day(s) and time(s) of such services will be decided between the CCC, the practitioner, and the Parents. These services shall be scheduled at a time so as not to interfere with the typical school day. The provider of these services shall be invited to attend any scheduled meetings of the CCC for the purpose of providing input to other professionals serving the Student, in regard as to how they may support the work of the speech therapist. The speech-language therapist conducting the above evaluation shall also determine the needs of the Student regarding assistive technology, and shall make a recommendation regarding same to the CCC. The LEA will provide the necessary assistive technology device(s) required at their expense as per Article 7.
- 7. Within ten (10) calendar days after the receipt of this decision, the School is to obtain and arrange for payment of the services of one who is appropriately licensed in the area of pediatric neurology, for the

specific purpose of receiving a recommendation from this physician conducting this diagnostic evaluation regarding the need, or lack thereof, of pharmacological intervention(s) relating to the management of the Student's overt behaviors, variances in mood, hyperactivity, and anxiety. Such a diagnostic assessment shall occur as soon as the physician's schedule will allow.

8. Within ten (10) days after receipt of this decision, the School shall conduct, or cause to have conducted, an assessment of the Student's specific needs for adaptive physical education and incorporate same into the IEP. If an IA is to deliver any part of the adaptive program, he or she must do so under the direct supervision of one appropriately licensed to implement such programs.
9. All evaluations shall be completed in no more than forty-five (45) calendar days from receipt of this order. Any evaluations which have not been completed by that time are subject to the complaint process available to the Parent, along with any other administrative remedies prescribed by law.
10. The parents are to make the Student available to the School for these evaluations to be conducted, unless illness or other significant events temporarily prevent his attendance. Should such events occur, the School will have additional days to complete the assessments listed above that are the same number as the days the Student was absent. Changes in the IEP are to be made based on the results of these assessments and consultation to the CCC provided by those conducting these assessments. The School shall have final authority to determine the specific person(s) involved in each of these assessments, although the Parents may provide input into the final decision in each case. The specific roles of those individuals who are not employees of the School will be determined by collaboration among school personnel, the consultants, and the parents that address the Student's needs as identified by the consultant as related to the goals and objectives/benchmarks in the Student's IEP. The terms, length, and conditions of the consultations shall be determined by the consultants in a manner reasonable for the needs of the Student and the School. The consultants will participate in CCC meetings to develop a final set of goals and objectives/benchmarks for the IEP. Included in the IEP will be a positive behavioral intervention plan designed to address specific behaviors as determined by the consultant(s). The revised IEP is to be developed and approved within thirty calendar days of the receipt of this decision, and any additional services are to begin no later than five (5) school days after that time. If all data from required assessments are not available to the CCC at the time stipulated, an additional meeting of the CCC shall be scheduled to incorporate such information in a second revision, or update, of the IEP.
11. The School and the Parents shall use the administrative remedies available to them to resolve any future disputes which may arise. Specifically, both parties are directed to use the CCC as a first option for resolving such disputes. As per Article 7, if the Parents refuse to participate in the CCC process, the School may conduct such a meeting, subject to appropriate prior notification to the Parents. If modifications to the Student's IEP occur as a result of such a meeting, or any other CCC meeting that are unacceptable to the Parents, it is the Parents' responsibility to request mediation or a due process hearing to resolve their concerns.
12. The Indiana Department of Education, Division of Exceptional Learners, is to appoint someone to monitor the implementation of this Order in the manner the Division deems appropriate. In no case should contact with the School be less than once per month in person or by telephone, and a written report is to be provided to the Division once per month, with copies to the Parents.
13. These Orders are to be implemented as stated unless this decision is appealed to the Indiana Department of Education.